IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Tr.P(Crl.).No. 73 of 2007()

CC.808/2005 of J.M.F.C.,VAIKOM

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PETITIONER: ACCUSED

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1. K.T.SEBASTIAN, AGED 50 YEARS,
S/O.THOMAS, KUNNATHU VEEDU, CHUVANNAMANNU KARA,
PANANCHERY VILLAGE, THRISSUR DISTRICT.

2. SOPHY, AGED 40 YEARS,
W/O.SEBASTIAN, KUNNATHU VEEDU,
CHUVANNAMANNU KARA, PANANCHERRY VILLAGE,
THRISSUR DISTRICT.

3. PAPPPACHAN @ JOSEPH, AGED 60 YEARS,
S/O.THOMAS, KUNNATHU VEEDU,
CHUVANNAMANNU KARA, PANANCHERY VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT-STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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T.P.Crl. No.73 Of 2007

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Dated this the 27th day of September, 2007

ORDER

The petitioners face indictment in a prosecution, inter alia, under Sections 406 and 420 IPC. The proceedings are pending before the Judicial First Class Magistrate Court- Vaikom. Consequent to nonappearance of the petitioners before the learned Magistrate warrants of arrest have been issued against the petitioners by the learned Magistrate. The petitioners have now come before this Court with a prayer that the case against them pending before the Judicial First Class Magistrate Court- Vaikom may now be transferred to any other court at Thrissur, their native place.

2. What is the reason? The learned counsel for the petitioners submits that the 1st petitioner is afflicted with diseases and finds it difficult to proceed to Vaikom to attend the trial. Ilness of one of the petitioners is the sole ground on which the transfer is sought.

3. The learned Public Prosecutor stoutly opposes the application. It would be unjust and unfair to compel all the witness to proceed all the way to Thrissur to attend the trial only to satisfy the convenience of the petitioners. It is for the petitioners to surrender before the Court at Vaikom, to seek bail afresh and file appropriate applications

seeking exemption under Section 317 Cr.P.C. Instead of doing that they have rushed to this Court with this prayer to transfer the case. It is obviously with an intention to delay or protract the proceedings, submits the learned Public Prosecutor.

4. I find absolutely no relevant circumstances urged before the court to justify the prayer for transfer. The prayer therefore deserves to be rejected. The illness of one of the petitioners is only a vague allegation. It is certainly not sufficient to justify the prayer for transfer the case from Vaikom to Thrissur. This transfer petition is in these circumstances dismissed.

5. The learned counsel for the petitioners submits that the petitioners apprehend that their applications for bail may not be considered on merits, in accordance with law and expeditiously, when they surrender before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such applications on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339]. If they surrender, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of

surrender itself.

6. The learned counsel for the petitioners submits that if personal appearance of the petitioners were insisted on all dates of postings, it would cause irreparable loses and hardship to the petitioners. The learned counsel for the petitioners submits that until the case reaches at the stage of 313 examination, no personal appearance is necessary. I have no reason to assume that the petitioners' application for exemption would not be considered by the learned Magistrate on merits, in accordance with law. Every court must do the same. Personal appearance need not ordinarily be insisted, unless there be valid and compelling reasons to justify such appearance.

This transfer petition is hence dismissed but with the above observations.

(R.BASANT, JUDGE)

sj